

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1903 of 2022

In the matter of:

An application under Section 115(4) of the Code of Civil Procedure.

And

Most. Shirin Sultana Rekha

... Petitioner

-Versus-

Md. Khadem Ashraf and others

... Opposite parties

Mr. M.G. Mahmud (Shaheen), Advocate

... For the petitioner.

Mr. Md. Sumon Ali, Advocate

... For the opposite party Nos.1-4.

Heard and Judgment on 07.11.2024.

On an application under Section 115(4) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-4 to show cause as to why the judgment and order dated 23.02.2022 passed by the learned District Judge, Kurigram in Civil Revision No.32 of 2019 rejecting the revision thereby affirming the order No.95 dated 02.07.2019 passed by the learned Senior Assistant Judge, Sada, Kurigram in Miscellaneous Case No.22 of 2007 rejecting an application for enlargement of time for depositing development cost under Section 148 to be read with Section 151 of the Code Civil Procedure should not

be set aside and/or pass such other or further order or as to this Court may seem fit and proper.

Facts in short are that the petitioner as petitioner instituted above case under Section 96 of the Non Agricultural Tenancy Act, 1949 for pre-emption against registered kabala deed dated 31.10.2006 transferring 8 decimal land by opposite party No.3 and 4 to opposite party No.1 and 2. On conclusion of trial the learned Assistant Judge allowed above case on contest on 11.01.2018 with condition that the petitioner shall deposit development cost of Taka 2,613/- within 45 days in default above case shall stand dismissed.

The petitioner submitted a petition under Sections 148 and 151 of the Code of Civil Procedure on 23.05.2019 for extension of above time for deposit of development cost Taka 2,613/- to the learned Assistant Judge who on consideration of submissions of the learned Advocates for respective parties rejected above petition.

Being aggrieved by and dissatisfied with above judgment and order of the learned Assistant Judge above petitioner as petitioner preferred Civil Revision No.32 of 2019 to the learned District Judge, Kurigram who on consideration of submissions of the learned Advocates for the respective parties and materials on record rejected above revision and upheld above order of the trial Court.

Being aggrieved by above judgment and order of the learned District Judge above petitioner moved to this Court and obtained this Rule with leave.

Mr. M. G. Mahmud (Shaheen), learned Advocate for the petitioner submits that in the impugned order the learned Assistant Judge did not mention that in default to deposit development cost of Taka 2,613/- within 45 days the case shall stand dismissed. But the learned Judge mentioned that in case of default in depositing development cost above case shall be treated to be dismissed which provides a scope for the petitioner for extension of above time. The petitioner became seriously ill immediately after passing of the impugned judgment and order by the trial Court. The petitioner was suffering from jaundice, blood dysentery and fever during the period from 05.01.2018 to 20.05.2019 and the petitioner could not communicate with his appointed Advocate and deposit above development cost. On consideration of above materials on record the learned Judge of the court of revision below should have allowed the revision and provide the petitioner an opportunity to deposit above development cost but the learned District Judge failed to appreciate above materials on record properly and most illegally rejected above revision which is not tenable in law.

On the other hand Mr. Md. Sumon Ali, learned Advocate for the opposite party Nos.1-4 submits that the learned Judge of the trial Court allowed the pre-emption with a default order directing the petitioner to deposit development cost of Taka 6,0231/-within 45 days in default above case shall stand dismissed. Admittedly the petitioner did not deposit above development cost and he submitted a petition for extension of above time after a laps of 1 year and 2 months.

On consideration of above materials on record the learned District Judge has rightly rejected the revision and upheld the order of the trial Court which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

Admittedly the petitioner filed above case under Section 24 of the Non Agricultural Tenancy Act, 1949 for pre-emption against the registered kabala deed dated 31.10.2006 of opposite party Nos.1 and 2 and the learned Assistant Judge allowed above case on contest with following order:

“আগামী ৪৫ দিনের মধ্যে প্রার্থীকে নালিশী সম্পত্তি উন্নয়ন খরচ বাবদ ২,৬১৩/- চালান মূলে বিধি মোতাবেক ১ ও ২ নং প্রতিপক্ষের অনুকূলে আদালতে জমা প্রদান করতে হবে। ব্যর্থতায় অত্র মোকদ্দমা না মঞ্জুর হয়েছে বলে গণ্য হবে।”

It is admitted that the petitioner did not deposit above development cost of Taka 2,631/-. It is also admitted that after a laps of 1 year and two months on 23.05.2019 the petitioner submitted a petition to the Trial Court for extension of above period of 45 days which was rejected.

At the very outset the petitioner could not show a reasonable cause in above petition for above unusually long delay of 1 year and 2 months in seeking extension of the time. In above petition the petitioner has alleged that he fell sick immediately after the passing of the impugned judgment and order by the trial Court and was suffering from jaundice, blood dysentery and fever. It seems to be very unusual that a person will remain ill due to above maladies from a period of 1 year and 2 months. No document was submitted along with above petition in support of above illness of the petitioner.

It is clear from above cited order of the trial Court that that the trial Court made the order of granting of the pre-emption conditional to the payment of development cost within 45 days and mentioned that in default in making above payment the case shall stand dismissed. Since the petitioner appeared before the trial Court for extension of above time after above period was already expired and the trial Court had no

jurisdiction to entertain above petition since above pre-emption case was already dismissed.

In above view of the materials on record I hold that the learned Judge of the trial Court on correct appreciation of facts and law rightly rejected the petition for extension of time for depositing development cost and the learned District Judge rightly rejected above revision of the petitioner and upheld the lawful order of the trial Court which calls for no interference.

I find no substance in this revisional application under Section 115(4) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

However, there is no order as to costs.

Send down the lower Court's records immediately.